

v5A Redline 3-30-23 revised by Grantor to address Town Attorney 3-30-23 comments

(Space above line is for Recording Purposes only)

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### CONSERVATION DEED RESTRICTION

*KNOW ALL MEN BY THESE PRESENTS*, that this CONSERVATION DEED RESTRICTION is hereby made this \_\_\_\_\_ day of , 2023, by **WNRV, LLC**, a New Hampshire limited liability company of 7B Emery Lane, Stratham, NH 03885 (hereinafter referred to as the "Grantor", which word where the context requires includes the plural and shall, unless the context clearly indicates otherwise, include the Grantor's executors, administrators, legal representatives, devisees, heirs, successors and assigns).

Grantor, for consideration paid, with WARRANTY covenants, grants in perpetuity to

to the TOWN OF NOTTINGHAM, a municipal corporation organized and existing under the laws of the State of New Hampshire, with a mailing address of Post Office Box 114, Town of Nottingham, County of Rockingham, State of New Hampshire 03290 (interchangeably referred to as the "Town", and "Grantee") and with Third Party Right of Enforcement therein granted to the State of New Hampshire acting through its Fish and Game Department Nongame and Endangered Wildlife Program or the agency then recognized by the State of New Hampshire as having responsibility for identification and/or conservation of habitat for rare, threatened, and endangered species, with a principal place of business at 11 Hazen Drive, Concord, New Hampshire 03301,

a perpetual CONSERVATION DEED RESTRICTION hereinafter described (the "Deed Restriction") with respect to certain portions of the two (2) parcels of land (herein referred to as the "Property") being unimproved land consisting of approximately 21 +/- acres situated off Stevens Hill Road in the Town of Nottingham, County of Rockingham, State of New Hampshire, shown as "Proposed Lot 1 Easement Area 441,836 sq.ft. -- 10.14 acres (See Note 13)" (the "Lot 1 Restricted Area") and

“Proposed Lot 7 Easement Area 487,088 sq.ft. -- 11.18 acres (See Note 13)” (the “Lot 7 Restricted Area”) on a plan entitled “Subdivision Plan -- Land of Williams Real Estate -- Tax Map 46, Lot 7 --Stevens Hill Road, Nottingham, New Hampshire” prepared by Doucet Survey LLC dated August 11, 2022 and revised March \_\_\_\_, 2023 to be recorded herewith in the Rockingham County Registry of Deeds, (hereinafter referred to as “the Plan”).

The area of Lot 1 outside the area shown on the Plan as “Proposed Lot 1 Easement Area 441,836 sq.ft. -- 10.14 acres (See Note 13)” and the area of Lot 7 outside the area shown on the Plan as “Proposed Lot 7 Easement Area 487,088 sq.ft. -- 11.18 acres (See Note 13)” are excluded from the operation of the Deed Restriction, and for the purposes of this document are each defined to be “Excluded Area”. See Section 4 below.

This Deed Restriction has been included as part of conservation measures agreed upon in consultation with the New Hampshire Fish and Game Department in accordance with RSA 212-A:9 under New Hampshire Department of Environmental Services Alteration of Terrain Permit #\_\_\_\_\_ and administered through the New Hampshire Department of Environmental Services Alteration of Terrain Program in accordance with Env-Wq 1503.19, as well as Department of Environmental Services Wetlands Permit #\_\_\_\_\_.

1. PURPOSES

The Deed Restriction hereby granted is pursuant to NH RSA 447:45-47 exclusively for the following conservation purposes (herein referred to as the "Purposes"):

A. The protection of rare and endangered species of wildlife and their associated habitat established for conservation purposes, with the intent to maintain, in perpetuity, natural vegetation, soils, hydrology and habitat for New Hampshire threatened, endangered and wildlife species of special concern.

B. The protection of the natural habitat generally with a focus on wildlife habitat management. For the purposes of this Conservation Deed Restriction, “wildlife habitat management” shall include, but not be limited to, alteration of vegetation and soil and the placement of structures to provide habitat for a wide range of wildlife species with focus and priority for the habitat needs and benefit to State listed wildlife species; and

C. The enhancement and enlargement of protected land that is nearby the Property;

D. The conservation and protection of open spaces, particularly the conservation of the productive forestland of which the Property consists and of the wildlife habitat thereon, and the protection of 2,000 feet +/- feet of undeveloped frontage along the Bean River, to which the property provides access and upon which it fronts;

E. The preservation of biological diversity, native flora and fauna, and the environments, natural habitats, and ecological processes which support them, as those values exist on the date of this instrument, and as they may evolve naturally in the future; and

F. The prevention of any use or activity on the Property which would be detrimental to drainage, flood control, water conservation, water quality, and erosion control, or that would or has the potential to impair or interfere with the conservation and preservation values of the Property.

G. This Deed Restriction is being granted at a time when both Lot 1 and Lot 7 are owned by the Grantor. Each of Lot 1 and Lot 7 will, in the future, be owned by separate landowners. For the sake of clarity, the inclusion of both Lot 1 and Lot 7 in this one Deed Restriction shall no way create any rights of the Lot 1 owner to utilize the Lot 7 Restricted Area; likewise, the inclusion of both Lot 1 and Lot 7 in this one Deed Restriction shall no way create any rights of the Lot 7 owner to utilize the Lot 7 Restricted Area.

The Deed Restriction hereby granted with respect to the Property is as follows:

2. USE LIMITATIONS (Subject to the Reserved Rights specified in Section 3, below.)

A. The Property shall be maintained in perpetuity as open space in its natural state without there being conducted thereon any industrial or commercial activities, except for wildlife habitat management that may include forestry (including timber harvesting) activities and agricultural activities as defined below.

i. Management activities on the Property, including agriculture and forestry, shall be performed in accordance with a written management plan ("Stewardship Plan") approved by the Grantee and prepared by a forester licensed by the State of New Hampshire, a certified wildlife biologist, or by another similarly qualified person, said person approved in advance and in writing by the Grantee, in accordance the long-term protection of those Purposes and values for which this Deed Restriction is granted, as described in Section 1 above.

ii. For the purposes hereof, "forestry" shall include the planting, growing, cutting and sale of forest trees of any size capable of producing timber or other forest products employed primarily to enhance or protect wildlife habitat; and the construction of roads or other access ways for the purposes of removing forest products from the Property for the purpose above.

iii. Forestry shall be supervised by a licensed professional forester or other qualified person approved.

iv. Forestry shall be carried out in accordance with all applicable local, state and federal laws and regulations, and, to the extent reasonably practicable, in

accordance with the then current, generally accepted best management practices for the sites, soils and terrain of the Property. Timber harvest activities shall be coordinated with the New Hampshire Fish and Game Nongame and Endangered Wildlife Program or the agency than recognized by the State of New Hampshire as having responsibility for identification and/or conservation of such species, to ensure such activities to result in negative impacts to rare wildlife species. (For references, see *Best Management Practices for Erosion Control on Timber Harvesting Operations in New Hampshire* (J.B. Cullen, 1996), *Good Forestry in the Granite State: Recommended Voluntary Forest Management Practices for New Hampshire* (New Hampshire Forest Sustainability and Standards Work Team, 1997) or similar successor publications).

v. No management activity shall be undertaken in a manner that is detrimental to the Purposes of this Deed Restriction.

B. The property shall not be subdivided. The Grantor further covenants and agrees not to undertake any action that would have the effect of subdividing the Property.

C. No structure or improvement, including, but not limited to, a dwelling (permanent, seasonal or temporary), any portion of a septic system, tennis court, swimming pool, dock, aircraft landing strip, telecommunications and/or wireless communications facility, tower, windmill, or mobile home, shall be constructed, placed or introduced onto the Property. In addition, no portion of the Property shall be used for lawn material disposal, parking or storage, snow storage or material storage/stockpiling.

D. No removal, filling or other disturbances of soil surface, nor any changes in topography, surface or subsurface water systems, wetlands, or natural habitat shall be allowed unless prior to commencement of any such activities all necessary federal, state, local, and other governmental permits and approvals shall be secured; activities shall be coordinated with the New Hampshire Fish and Game Nongame and Endangered Wildlife Program or the agency than recognized by the State of New Hampshire as having responsibility for identification and/or conservation of such species, to ensure such activities to result in negative impacts to rare wildlife species; and no activities under this subsection are permitted unless they are not detrimental to the purposes of this Deed Restriction.

E. No outdoor advertising structures such as signs and billboards shall be displayed on the Property except as desirable or necessary in the accomplishment of the agricultural, forestry, conservation, or non-commercial outdoor recreational uses of the Property, and provided such signs are not detrimental to the Purposes of this Deed Restriction.

F. There shall be no mining, quarrying, excavation, or removal of rocks, minerals, gravel, sand, topsoil, water, or other similar materials from the Property, except in connection with any improvements made pursuant to the provisions noted in this document.

G. There shall be no dumping, injection, burning, or burial of manmade materials or materials then known to be environmentally hazardous.

H. There shall be no use of chemical herbicides or pesticides, except for wildlife habitat management and then only in coordination with the New Hampshire Fish and Game Nongame and Endangered Wildlife Program or the agency then recognized by the State of New Hampshire as having responsibility for identification and/or conservation of such species. Herbicides or pesticides are prohibited within wetlands or wetland buffer setbacks.

I. Existing trails that are identified on the Plan will be maintained in compliance with the terms noted in this document and as identified on the Plan recorded with the Deed Restriction. Trails shall be maintained in their natural state and shall remain unimproved.

J. New trails not identified on the Plan will be submitted to the town conservation commission and New Hampshire Fish and Game Nongame and Endangered Wildlife Program approval prior to any construction. New trails intended for private use may be cleared, constructed, and maintained for walking, cross country skiing, hiking, snow shoeing and other limited low impact, transitory, non-motorized, non-commercial outdoor educational or recreational activities within and across the Property, provided said trails are consistent with and not detrimental to the Purposes of this Deed Restriction. Trail making and management activities shall be carried out in accordance with all applicable local, state and federal laws and regulations, and, to the extent reasonably practicable, in accordance with the then current, generally accepted best management practices for the sites, soils and terrain of the Property.

K. The owner of each of the Lots shall be entitled to enjoy exclusive use of their Lot's respective portion of the Deed Restriction portion of said Lot for activities including but not limited to hunting, maple sugaring, hiking, snow shoeing, and other non-commercial recreational activities. No activity shall be undertaken in a manner that is detrimental to the Purposes of this Deed Restriction or that does not comply with Use Restrictions of this Deed Restriction. For the sake of clarity, the inclusion of both Lot 1 and Lot 7 in this one Deed Restriction shall no way create any rights of the Lot 1 owner to utilize the Lot 7 Restricted Area; likewise, the inclusion of both Lot 1 and Lot 7 in this one Deed Restriction shall no way create any rights of the Lot 7 owner to utilize the Lot 7 Restricted Area.

L. Open space/conservation area boundaries shall be marked with placards at no less than 75' apart (adjust if needed based on site conditions) that identify the boundaries of the Deed Restricted areas and Use Limitations. Placards must be maintained in perpetuity by the respective owners of Lot 1 and Lot 7 in collaboration with the Town of Nottingham and shall do so on their respective land and serve as a reminder of protected area(s) with restrictions.

M. No activities under this Section are permitted unless they are not detrimental to the purposes of this Deed Restriction.

### 3. RESERVED RIGHTS

A. The Grantor reserves for the benefit of the Lot owners on their Lot's respective portion of the Deed Restriction portion of said Lot the right to conduct non-commercial management activities on the Property (but subject to the provisions of Section 1 Purposes and Section 2 Use Limitations), including agriculture, forestry, and recreation (including the installation of trails and maintenance thereof and each Lot Owner's exclusive use of their Lot's portion of the Deed Restriction portion of said Lot for activities limited to hunting, maple sugaring, hiking, snow shoeing, collection of fallen timber for personal use firewood, etc), without prior notice to or the written approval of the Grantee, for personal use or for the improvement of the forest or wildlife habitat resources of the Property. No activity shall be undertaken in a manner that is detrimental to the Purposes of this Deed Restriction or that does not comply with Use Restrictions of this Deed Restriction. In connection with maple sugaring, each Lot Owner shall be allowed to utilize snowmobiles to transport containers of maple sap within and from their Lot's portion of the Deed Restriction portion of said Lot.

B. The Grantor reserves the right for each Lot owner to use the Excluded Area for all uses presently and in the future allowed by right under zoning. See provisions above in Section 1.G.

### 4. DEED RESTRICTION CONVEYED ON EXCLUDED AREA

For the benefit and in aid of the Deed Restriction granted hereby and running therewith, the Grantor hereby also grants to the Grantee the right to enforce the following Restriction with respect to the Excluded Area:

Each Excluded Area shall not be further subdivided.

### 5. BREACH OF DEED RESTRICTION

A. When a breach of this Deed Restriction, or conduct by anyone inconsistent with this Deed Restriction, comes to the attention of the Grantee or the Town of Nottingham, it may notify the Grantor of such breach or conduct. The Grantor within thirty (30) days after receipt of such notice or after otherwise learning of such breach or conduct shall undertake those actions, including restoration, which are reasonably calculated to cure swiftly said breach, or to terminate said conduct, and to repair any damage. The Grantor shall promptly notify the Grantee of its actions taken under this section.

B. If the Grantor fails to take such proper action under the preceding section, the Grantee shall, as appropriate to the purposes of this deed, undertake any actions that are reasonably necessary to cure such breach or to repair any damage in the Grantor's name or to terminate such conduct. The cost thereof, including the Grantee's expenses, court costs and legal fees, shall be paid by the Grantor, provided that the Grantor is directly or primarily responsible for the breach.

C. Nothing contained in this Deed Restriction shall be construed to entitle the Grantee to bring any action against the Grantor for any injury to or change in the Property resulting from causes beyond the Grantor's control, including, but not limited to, unauthorized actions by third parties, natural disasters such as fire, flood, storm, and earth movement, or from any prudent action taken by the Grantor under emergency conditions to prevent, abate or mitigate significant injury to the Property resulting from such causes.

D. The Grantee and the Grantor reserve the right, separately or collectively, to pursue all legal remedies against any third party responsible for any actions detrimental to the conservation purposes of the Deed Restriction.

#### 6. SEVERABILITY

If any provision of this Deed Restriction, or the application thereof to any person or circumstance, is found to be invalid by a court of competent jurisdiction, by confirmation of an arbitration award or otherwise, the remainder of the provisions of this Deed Restriction or the application of such provision to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.

#### 7. NOTIFICATION OF TRANSFER

The Grantor agrees to notify the Grantee in writing no later than thirty days after the transfer of title to the Property. With notification of transfer, Grantor shall provide contact information to Grantee on the anticipated new lot owner (name and mailing address) and have the new lot owner cc'd on the notification of transfer.

#### 8. BENEFITS, BURDENS AND ACCESS

a. The benefits and burdens of the Deed Restriction conveyed hereby shall run with the Property and shall be enforceable against all future owners and tenants in perpetuity.

b. The Town of Nottingham Conservation Commission shall have reasonable access to the Property and all of its parts to determine compliance with and to enforce this Deed Restriction and exercise the rights conveyed hereby and fulfil the responsibilities and carry out the duties assumed by the acceptance of this Deed Restriction. Prior to accessing the Property, the Conservation Commission shall provide written notice to the lot owner(s) at least seven (7) days in advance of the proposed access. The written notice shall include the proposed date, time, and duration of anticipated access.

c. The State of New Hampshire Fish and Game Department Nongame and Endangered Wildlife Program, or the agency than recognized by the State of New Hampshire as having responsibility for identification and/or conservation of such species, and its agents shall have access to property (provided 7 day advance written notice for access is sent to the Owners of lot 1 and 7 as the case may be) for the purposes of

wildlife management and the right of enforcement against violations of the conditions set forth within this Conservation Deed Restriction, except in the case of an emergency in which event no notice shall be required.

#### 9. NOTICES

All notices, requests and other communications required to be given under this Deed Restriction shall be in writing, except as otherwise provided herein, and shall be delivered in hand or sent by certified mail, postage prepaid, return receipt requested to the appropriate address set forth above or at such other address as the Grantor or the Grantee may hereafter designate by notice given in accordance herewith. Notice shall be deemed to have been given when so delivered or so mailed.

#### 10. INFORMATION SHARING

Grantor shall share with Grantee and the New Hampshire Fish & Game Department Nongame Wildlife Program the Site Plans, shapefiles, and KMZ files delineating surveyed boundaries of the Property and the Deed Restricted area. Boundaries shall be surveyed and metes and bounds descriptions shall be provided to New Hampshire Fish and Game or the agency then recognized by the State of New Hampshire as having responsibility for identification and/or conservation of habitat for rare, threatened and endangered species within 30-days after executing this document..

#### 11. SEVERABILITY

If any provision of this Deed Restriction, or the application thereof to any person or circumstance, is found to be invalid by a court of competent jurisdiction, by confirmation of an arbitration award or otherwise, the remainder of the provisions of this Deed Restriction or the application of such provision to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.

#### 12. CONDEMNATION

A. Whenever all or part of the Property is taken in exercise of eminent domain by public, corporate or other authority so as to abrogate in whole or in part the Deed Restriction conveyed hereby, or whenever all or a part of the Property is lawfully sold without the restrictions imposed hereunder in lieu of condemnation or exercise of eminent domain, the Grantor and the Grantee shall thereupon act jointly to recover the full damages resulting from such taking or lawful sale with all incidental or direct damages and expenses incurred by them thereby to be paid out of the damages recovered.



B. The balance of the land damages recovered from such taking or lawful sale in lieu of condemnation or exercise of eminent domain shall be divided between the Grantor and the Grantee in proportion to the fair market value of their respective interests in that part of the Property condemned on the date of execution of this Deed Restriction. For this purpose and that of any other judicial extinguishment of this Deed Restriction, in whole or in part, the Grantee's interest shall be the amount by which the fair market value of the Property immediately prior to the execution of this Deed Restriction is reduced by the use limitations imposed hereby. The value of the Grantee's interest shall be determined by an appraisal prepared for federal income tax purposes by a qualified appraiser within one year of the date of this Deed Restriction, and submitted to the Grantee; or, if that is unavailable, the value of the Grantee's interest shall be determined by an appraisal prepared by a qualified appraiser at the time of condemnation. Any increase in value attributable to improvements made after the date of the Conservation Deed Restriction shall accrue to the party who made the improvements.

C. The Grantee shall use its share of the proceeds in a manner consistent with and in furtherance of one or more of the conservation purposes set forth herein.

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Signed as a sealed instrument this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

WNRV, LLC

\_\_\_\_\_  
Joseph Falzone, Manager

STATE OF \_\_\_\_\_

\_\_\_\_\_, ss.

On this \_\_\_\_\_ of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned notary public, personally appeared Joseph Falzone, Manager of WNRV, LLC proved to me through satisfactory evidence of identification, which was  photographic identification with signature issued by a federal or state governmental agency,  oath or affirmation of a credible witness,  personal knowledge of the undersigned, to be the person whose name is signed on the preceding or attached document, and acknowledged that she signed the foregoing instrument for its stated purpose as his free act and deed on behalf of WNRV, LLC

\_\_\_\_\_  
Notary Public  
My Commission Expires: